IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5282 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

STATE TRANSPORT WORKERS UNION

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 30/11/2000

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation has challenged the award dated 5.8.1986 passed by the Industrial Tribunal, Ahmedabad, in Reference (IT) No.384 of 1980 by which the Tribunal set aside the order of the

petitioner-corporation dated 31.7.1979 imposing punishment of stoppage of one increment on the concerned employee represented by the respondent-union with future effect.

2 A departmental inquiry was held against the employee through Shri B.M. Vora on an allegation that he had driven the bus negligently on 25.1.1979 causing an accident in which a small child was injured. In the inquiry the competent authority on the basis of the material on record held the delinquent guilty of the charges of misconduct and imposed the punishment of withholding his increment for one year with future effect.

3 Before the Tribunal it was contended that the inquiry was not held in consonance with the principles of natural justice and that the punishment was unjustified. The Tribunal took note of the purshis exh.58 filed by the workman to the effect that he did not challenge the legality and propriety of the inquiry. It, however, by observing that there was no eye witness examined at the domestic enquiry and that the reporter who was examined was not an eye-witness held that the charge of the negligence was not proved and set aside the order of the Corporation dated 31.7.1979 imposing the said punishment with a direction that the delinquent shall be released the increments and be paid the arrears within two months from the date of the operation of the award.

4 It is clear from the record that this is not a case of no evidence. During the departmental proceedings the delinquent was examined on 23.7.1979 and it can be seen from his statement that in his answer to the question as to how the accident took place the delinquent had stated that when he was driving the bus and passing near Sathod a boy suddenly crossed the road and was slightly hit by the bus by its left side as a result of which the boy fell down on the road and got injured. The boy was thereafter taken to the hospital in the vehicle of the corporation. The delinquent had also stated that he had blown the horn at that time. He however maintained that the accident had not occurred because of his negligence but had taken place since the boy tried to cross the road suddenly. The fact that the boy was injured was also borne out from the statement of his relative, Jamadbhai. It will thus be seen that there was material on record on the basis of which the delinquent was found to be guilty by the competent authority and imposed the punishment of stoppage of one increment with future effect. The delinquent did not challenge the

legality and propriety of the inquiry proceedings as per the note exh.5 filed by him before the Tribunal. When the delinquent himself had admitted that the accident had taken place because the vehicle which he was plying had dashed against the boy who was trying to cross the road and it was established that the boy was injured and was taken to the hospital, the Tribunal could not have upset the decision of the competent authority by simply observing that no eye-witness was examined at the domestic inquiry. Even if there was no eye witness the decision could have been taken considering the material which was on record. The duty on the part of the driver while plying a bus through a village where children can be expected to dart across the road is much higher and he must slow down the bus. The delinquent had blown a horn which indicates that he had seen child trying to cross the road. Therefore, while he was passing through the area inhabited by village folk he should have driven the bus at a manageable speed so as not to dash against the child. Since he was guilty of culpable negligence, it was treated as a misconduct by the competent authority and punishment of only stoppage of one increment was imposed. The Tribunal has failed to consider the evidence which was on record including the statement of the delinquent himself which was a clear pointer to the manner in which the accident took place. Absence of any other eye witness could not have been a ground for not considering the material on record on the basis of which the competent authority came to a finding that the delinquent was guilty. By not considering the relevant material on record on the question of guilt of the delinquent, the Tribunal has committed an error in exercise of its jurisdiction resulting in a pervert finding. The impugned order therefore cannot be sustained and is hereby set aside and the order of the Corporation dated 31.7.1979 stands restored. Rule is made absolute accordingly with no order as to costs.

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